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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

KIMBERLY BINNINGTON,

Plaintiff

v.

LOVEJOY SURGICENTER, INC., a domestic
business corporation,

Defendant

Case No. 121013513

COMPLAINT

(Hostile Work Environment,
Retaliation, Whistleblowing and
Related Claims)

DEMAND FOR JURY TRIAL

Plaintiff Kimberly Binnington, by and through her attorneys, alleges as follows:

1.

This is an action for declaratory, injunctive and monetary relief, including attorneys' fees and costs, to redress defendant's violations of plaintiff's rights protected by the state of Oregon.

PARTIES

2.

Plaintiff Kimberly Binnington ("Plaintiff") was, at all material times, an employee of Lovejoy Surgicenter, Inc. Plaintiff resides in Multnomah County.

3.

Defendant Lovejoy Surgicenter, Inc., is a domestic business corporation. Lovejoy Surgicenter, Inc., is located and registered in Portland, Oregon, in the county of Multnomah.

GENERAL ALLEGATIONS

4.

In January 2011, Plaintiff began working as a surgical technician in the Operating Room at the Lovejoy Surgicenter, Inc. (“the Clinic”).

5.

Evie Gradwohl, R.N., (“Gradwohl”) was plaintiff’s immediate supervisor. Gradwohl directed plaintiff’s work in the Operating Room. The Clinic also instructed plaintiff that if a state of Oregon investigator was on-site to inspect the Clinic, plaintiff was to refer to Gradwohl as the Operating Room supervisor. Plaintiff was told that the Clinic could “get in trouble” with the state if the state inspector thought Joy Staples (“Staples”), another manager who was not a licensed nurse, was supervising the Operating Room or its staff. Plaintiff followed the Clinic’s protocol, referring to Gradwohl as the Operating Room supervisor. Plaintiff also observed that when state inspectors were on site, they directed their questions about procedures to Gradwohl, not Staples.

6.

Shortly after plaintiff began working at the Clinic, she became concerned about the inappropriate sexual conduct and sexual comments of Clinic staff, and particularly of Gradwohl. Gradwohl engage in sexually explicit comments and conduct, including but not limited to the following:

- (a) Gradwohl exposed her newly augmented breasts to plaintiff and tried to get her to feel them. Gradwohl exposed her newly augmented breasts to other staff, as well.

1 (b) Gradwohl bragged about learning burlesque dancing and performed burlesque in
2 the presence of Clinic staff and patients.

3 (c) Gradwohl talked about explicit sexual acts and plans to engage in sexual acts.

4 (d) Gradwohl talked about how sexually skilled her boyfriends were.

5 (e) Gradwohl talked about sex toys she used and even wore a cock ring on her wrist
6 in the workplace.

7 7.

8 Gradwohl's explicit, sexualized conduct and comments were unwelcome and made
9 plaintiff acutely uncomfortable.

10 8.

11 In September 2011, Gradwohl began pressuring plaintiff, who is married, to engage in an
12 extramarital affair. Plaintiff told Gradwohl that she was not interested in an affair. Despite
13 plaintiff's objections, for several months Gradwohl pressured her to have an affair. Gradwohl's
14 pressure included the following:

15 (a) Pressuring plaintiff to go out with one of her [Gradwohl's] boyfriends, a man
16 named "Charlie" and to have sexual relations with him; and

17 (b) Pressuring plaintiff to build an internet profile and/or respond to advertisements
18 on a website for people looking to engage in extramarital affairs.

19 9.

20 As a result of Gradwohl's harassing and unwelcome behavior, plaintiff began
21 experiencing anxiety and dread each morning before work.

22 10.

23 In January 2012, plaintiff reported Gradwohl's inappropriate and harassing conduct to
24 Staples. Staples responded that she would "look into it." Plaintiff was never asked about the

1 harassment again. Plaintiff was never interviewed by another staff member or manager and no
2 one followed up with her regarding her complaint. Gradwohl continued working as the
3 Operations Room manager and continued supervising plaintiff after plaintiff's reports to
4 management.

5 11.

6 Defendant has no policy concerning reporting harassment or what steps it would take in
7 the event of such a report. Instead, its Employee Handbook states only that employees should
8 report any problems to "Lovejoy Surgicenter." The policy does not provide any information
9 regarding whom such reports should be made to, whether confidentiality will be kept, what type
10 of investigation will be done (if any), what protection from retaliation will be given, and whether
11 corrective action will be taken.

12 12.

13 After plaintiff's repeated objections to Gradwohl's harassing and unwelcome comments
14 and conduct, Gradwohl became increasingly hostile and abusive toward plaintiff. Gradwohl
15 disparaged plaintiff in the presence of others and was verbally abusive toward her. Shortly
16 before plaintiff was forced to resign, Gradwohl threw a clothes hanger at plaintiff. In April 2012,
17 plaintiff reported to Staples that Gradwohl had thrown a hanger at her at work. To plaintiff's
18 knowledge, neither Staples nor the Clinic took any action.

19 13.

20 Gradwohl's hostile comments and conduct caused plaintiff further anxiety and physical
21 symptoms.

22 14.

23 Plaintiff also observed Gradwohl frequently speaking about patients in a demeaning and
24 inappropriate manner, including expressing negative judgments about their clothing, bodies, and
25

1 hygiene. Plaintiff witnessed Gradwohl inappropriately touch patients when they were under
2 sedation. Gradwohl fondled the breasts of one patient who was sedated. Gradwohl drew a
3 picture of a bird on another patient while the patient was under sedation and later wrote about the
4 drawing in a February 24, 2012 post on Facebook.

5 15.

6 Gradwohl's abusive actions toward patients violated Oregon's Nurse Practice Act.

7 16.

8 Plaintiff was offended and sickened by Gradwohl's actions toward patients.

9 17.

10 In May 2012, plaintiff reported Gradwohl's continued harassment and patient abuse to
11 Staples. At that time, plaintiff also gave a two-week notice and stated that she could no longer
12 work in the hostile work environment caused by Gradwohl. Staples did not offer any way to
13 resolve the situation with Gradwohl or any means for plaintiff to continue working at the Clinic.
14 However, Staples asked plaintiff to write a letter documenting her concerns.

15 18.

16 In late May 2012, plaintiff advised Staples in writing about the patient abuse and hostile
17 work environment. Staples did not follow up with plaintiff, nor was plaintiff contacted or
18 interviewed by anyone else at the Clinic. Gradwohl continued in her employment at the Clinic.
19 Despite plaintiff's repeated reports, the Clinic failed to take any corrective action against
20 Gradwohl.

21 19.

22 The Clinic failed to take prompt, effective action to stop the harassing conduct and hostile
23 work environment. As a result, plaintiff experienced significant anxiety and became physically
24 ill. She could not longer tolerate the workplace environment and consequently was forced to
25

1 leaver her employment effective June 2, 2012.

2 **FIRST CLAIM FOR RELIEF**

3 **Hostile Work Environment in Violation of ORS 659A.030(a)**

4 20.

5 Plaintiff realleges and incorporates paragraphs 1 through 19.

6 21.

7 Gradwohl's comments and conduct toward plaintiff, staff and patients, created a hostile
8 work environment on the basis of sex.

9 22.

10 Gradwohl's conduct was unwelcome.

11 23.

12 The Clinic had no policies or procedures in place to show that it exercises reasonable care
13 to prevent and correct promptly any sexually harassing behavior.

14 24.

15 The Clinic took no affirmative steps, even after plaintiff reported the conduct, to prevent
16 or promptly correct the harassing behavior.

17 25.

18 Defendant subjected plaintiff to a hostile work environment with the intent to cause her to
19 quit or in reckless disregard of the likelihood that plaintiff would be forced to quit. On June 2,
20 2012, Plaintiff was constructively discharged from her job.

21 26.

22 As a result of defendant's unlawful employment practice alleged herein, plaintiff is
23 entitled to a declaration that defendant acted in violation of the statute set forth in this claim for
24 relief.

27.

As a result of defendant's unlawful employment practice alleged herein, plaintiff has lost wages and benefits of employment through the anticipated date of trial in an amount to be determined at trial, which for purposes of ORCP 18B only, is estimated to equal or exceed \$15,000, for which she should recover from defendant.

28.

As a further result of defendant's unlawful employment practice alleged herein, plaintiff has suffered noneconomic damages in an amount to be determined at trial based on the evidence presented at trial, which for purposes of ORCP 18B only, is estimated to equal or exceed \$150,000, for which she should recover from defendant.

29.

Defendant's conduct as described herein were an intentional disregard of plaintiff's statutory rights, in reckless disregard of defendant's societal obligations, and committed with malice and conscious indifference to the health, safety and welfare of plaintiff. Plaintiff intends to move to amend this complaint to allege an entitlement to punitive damages to punish defendant and to deter defendant and others from similar conduct in the future.

30.

Pursuant to ORS 659A.885 and/or ORS 20.107, plaintiff is entitled to recover her reasonable attorneys fees and costs, including expert witness fees, incurred herein.

SECOND CLAIM FOR RELIEF

Retaliation in Violation of ORS 659A.030(f)

31.

Plaintiff realleges and incorporates paragraphs 1 through 19 and 26 through 30.

1 32.

2 Plaintiff objected to Gradwohl's harassment.

3 33.

4 Plaintiff reported Gradwohl's harassment and patient abuse to Staples.

5 34.

6 After plaintiff's reports, Gradwohl retaliated by belittling plaintiff, becoming verbally
7 hostile to plaintiff, and throwing an item at plaintiff. Defendant retaliated against plaintiff by
8 ignoring plaintiff's reports of harassment and allowing Gradwohl to continue supervising
9 plaintiff. Defendant's actions caused plaintiff's constructive discharge.

10 **THIRD CLAIM FOR RELIEF**

11 **Wrongful Discharge at Common Law**

12 35.

13 Plaintiff realleges and incorporates paragraphs 1 through 19, 27 through 29.

14 36.

15 Plaintiff fulfilled an important public duty when she reported patient abuse.

16 37.

17 Plaintiff pursued an important right related to employment when she objected to
18 Gradwohl's harassment and reported it.

19 38.

20 Defendant's actions as alleged herein created and/or maintained a hostile work
21 environment under which plaintiff was required to work and which had a negative impact on
22 plaintiff's health and well-being.

23 39.

24 The working conditions were so intolerable that a reasonable person in plaintiff's position
25

1 | would have resigned because of them.

2 | 40.

3 | Plaintiff reported the hostile work environment on at least three separate occasions.
4 | Defendant failed to correct the hostile work environment. Plaintiff continued being harassed and
5 | subjected to a hostile work environment.

6 | 41.

7 | Plaintiff communicated to defendant that she could not remain in the intolerable
8 | workplace. Defendant failed to correct the hostile work environment.

9 | 42.

10 | Defendant either desired to cause plaintiff to leave employment as a result of the hostile
11 | work environment and failure to correct the harassment, or knew that she was certain, or
12 | substantially certain, to leave employment as a result.

13 | 43.

14 | On June 2, 2012 plaintiff was forced to quit employment with defendant because of the
15 | hostile work environment, defendant's refusal to correct the hostile work environment or protect
16 | plaintiff from retaliation, and because of plaintiff's ongoing emotional distress as a result of the
17 | hostile work environment.

18 | 44.

19 | Defendant's constructive discharge of plaintiff's employment was substantially motivated
20 | by plaintiff's reports of sexual harassment, hostile work environment and patient abuse as alleged
21 | herein, and was in retaliation for plaintiff's pursuit of her rights related to her role as an
22 | employee. These rights are important to the public interest.

23 | 45.

24 | As a result of defendant's unlawful employment practice alleged herein, plaintiff is

1 | entitled to a declaration that defendant wrongfully terminated her employment.

2 | **FOURTH CLAIM FOR RELIEF**

3 | **Whistleblower retaliation in violation of ORS 659A.199**

4 | 46.

5 | Plaintiff realleges and incorporates paragraphs 1 through 19, 26 through 28, and 30.

6 | 47.

7 | Plaintiff reported conduct she believed to be a violation of a rule, law or statute. The
8 | conduct reported by plaintiff included harassment, hostile work environment, and patient abuse,
9 | as described herein.

10 | 48.

11 | Defendant retaliated against plaintiff in response to her reporting the unlawful conduct in
12 | violation of ORS 659A.199.

13 | **FIFTH CLAIM FOR RELIEF**

14 | **Whistleblower Retaliation in Violation of ORS 441.057**

15 | 49.

16 | Plaintiff realleges and incorporates paragraphs 1 through 19, 26 through 30, and 40
17 | through 45.

18 | 50.

19 | The Lovejoy Surgicenter, Inc., is a health care facility for purposes of ORS Chapter 441.

20 | 51.

21 | Plaintiff reported patient abuse and inappropriate treatment of patients by Gradwohl, as
22 | described herein. Plaintiff's reports were protected by ORS 441.057.

23 | 52.

24 | Defendant retaliated against plaintiff for her reports of patient abuse and inappropriate
25 |

1 treatment in violation of ORS 441.057(2).

2 **PRAYER**

3 WHEREFORE, plaintiff requests the court to declare defendant in violation of the
4 statutes set forth in plaintiff's claims for relief; award plaintiff compensation for her lost past
5 wages and benefits of employment and lost earning capacity and future earnings and benefits;
6 order defendant to make plaintiff whole by providing compensation for noneconomic losses in
7 amounts as are awarded by a jury; award plaintiff her costs of suit and reasonable attorney fees,
8 costs and expert witness fees; order defendant to pay prejudgment and post-judgment interest on
9 all amounts due to plaintiff as a result of this action, with interest at the prevailing rate; and order
10 such further or alternative relief in favor of plaintiff as the court deems appropriate.

11 **JURY TRIAL DEMAND**

12 Plaintiff demands a jury trial on all questions of fact or combined questions of law and
13 fact raised by this complaint.

14 DATED October 23, 2012.

15 **CRISPIN EMPLOYMENT LAWYERS**

16
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